OLIVER B. MITCHELL III
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LONG BEACH, CALIFORNIA
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IN PRO PER

LACV1905036-MWF-RAOx

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT COURT OF CALIFORNIA

OLIVER B. MITCHELL III,
Plaintiff,

vs.

SECRETARY, UNITED STATES DEPARTMENT OF VETERANS AFFAIRS; and ANN BROWN, DIRECTOR, GREATER LOS ANGELES VA MEDICAL CENTER,
Defendant.

CASE NUMBER _____

COMPLAINT FOR INJUNCTIVE RELIEF

COMPLAINT FOR INJUNCTIVE RELIEF

INTRODUCTION

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, and the Administrative Procedure Act ("APA"), 5 U.S.C. 701 et seq., seeking the release of dental records relating to the Plaintiff's dental care at the United States Department of Veterans Affairs and the Defendants decision to withhold documents otherwise subject to a Freedom of Information Act request for reasons outside the statutory exemptions.

2. Plaintiff, Oliver B. Mitchell III, sought access to records related to his

dental care at the West Los Angeles VA Medical Center located at 11301 Wilshire Blvd., Los Angeles, California 90073. This case concerns documents that Mr. Mitchell identified as responsive but the Defendants failed to disclose.

3. Dental records consist of documents related to the history of present illness, clinical examination, diagnosis, treatment done, and the prognosis. A dental record is the detailed document of the history of the illness, physical examination, diagnosis, treatment, and management of a patient. Dental professionals are compelled by law to produce and maintain adequate patient records. Comprehensive and accurate records are a vital part of dental practice. Good record keeping is fundamental for good clinical practice and is an essential skill for practitioners. The primary purpose of maintaining dental records is to deliver quality patient care and follow-up. The record may consist of several different elements, which include written notes, radiographs, study models, referral letters, consultants' reports, clinical photographs, results of special investigations, drug prescriptions, laboratory prescriptions, patient identification information, and a comprehensive medical history.

4. On March 6, 2019, Mr. Mitchell first began to request documents under the FOIA from Defendants United States Department of Veterans Affairs, VA West Los Angeles Medical Center. To date, the Plaintiff has not received the documents as indicated in his request.

5. The Plaintiff is legally entitled to these documents, which were requested over thirty days ago. The Defendants have far exceeded the statutory and regulatory time limitation to respond to the Plaintiffs request.

6. Given the seriousness of the violations at hand, it is of concern that the requested documents are disclosed to the Plaintiff. Accordingly, this Court should order Defendants to provide the requested records to Mr. Mitchell immediately.

JURISDICTION & VENUE

7. This Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) and 5 U.S.C. § 552(a)(4)(A)(vii). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. §§ 701–706.

8. Because Defendant failed to comply with the requirements to respond set forth in 5 U.S.C. § 552(a)(6)(A), Plaintiffs have constructively exhausted their administrative remedies and are entitled to proceed with this judicial action pursuant to 5 U.S.C. § 552(a)(6)(C)(i).

9. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) because Defendants principal place of business is in California.

PARTIES

10. Plaintiff, Oliver B. Mitchell III, is a resident of Los Angeles, California.

11. Defendant, United States Department of Veterans Affairs is a federal agency headquartered at 810 Vermont Avenue NW, Washington, DC 20420. VA has possession, custody, and control over records sought by Plaintiff. VA is an agency within the meaning of 5 U.S.C. § 552 (f) (1).

12. Defendant, Robert Wilkie, serving as the Secretary of the United States Department of Veterans Affairs is named as "Defendant" in this action in his official capacity as head of the Department of Veterans Affairs. The Defendant, United States Department of Veterans Affairs operating as a Federal Agency, was at all times material, pertinent and relevant hereto. Current mailing address is; c/o Secretary Robert Wilkie 810 Vermont Avenue NW, Washington, DC 20420. The Defendant was in fact, acting under the authority or color of law at the time these claims occurred.

13. Defendant, Ann Brown, Director, Greater Los Angeles VA Medical Center, is named and being hereby named in her official capacities, is an individual and a resident of this jurisdictional district, is a federal employee and was at all times

material, pertinent and relevant hereto, employed by the United States Department of Veterans Affairs. Current mailing address is; c/o Ann Brown 11301 Wilshire Blvd., Los Angeles, California 90073. The Defendant was in fact, acting under the authority or color of law at the time these claims occurred.

STATEMENT OF FACTS

14. As the United States Supreme Court has recognized, "the basic purpose of the FOIA is to open agency action to the light of public scrutiny." Department of Air Force v. Rose, 425 U.S. 352, 372 (1976).

15. On March 6, 2019, the Plaintiff filed an "Individuals Request for a Copy of Their Own Health Information" VA Form 10-5345a with the VA seeking dental records relating to his dental care at the West Los Angeles facility. Per the request "Please provide dental records to include dental x-rays." **EXHIBIT 1**

16. On April 29, 2019, the Plaintiff via fax provided a follow up regarding his March 6, 2019 request. Per the fax "My name is Oliver B. Mitchell III, and on March 6, 2019 a release for information was submitted to your office. As of today's date I have yet to receive the requested information as requested. For your reference I have attached the original request as submitted." **EXHIBIT 2**

17. On May 17, 2019, the Plaintiff filed an "Individuals Request for a Copy of Their Own Health Information" VA Form 10-5345a with the West Los Angeles VA Medical Center and the Sepulveda VA Medical Center seeking dental records relating to his dental care at the West Los Angeles facility. Per the request "Please provide dental records to include dental x-rays." **EXHIBIT 3**

18. On June 3, 2019, the Plaintiff phoned the West Los Angeles VA Medical Center, Release of Information in response to his previous FOIA request. A representative for the Defendant stated that the Defendant were not in possession of any request and to wait an additional 7 days to see if "maybe" the request would

appear.

CAUSES OF ACTION

19. The Plaintiff repeats and re-alleges paragraphs 1-18.

20. Defendants failure to timely respond to the Plaintiffs request violates the FOIA, 5 U.S.C. § 552(a)(6)(A)(ii), and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

21. Defendants' failure to make a reasonable effort to search for records responsive to the Plaintiffs request violates the FOIA, 5 U.S.C. § 552(a)(3)(C), and the Administrative Procedure Act ("APA") 5 U.S.C. § 701 et seq.

22. Defendants' wrongful withholding of non-exempt responsive materials violates the FOIA, 5 U.S.C. § 552(a)(3)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court enter a judgment for Plaintiff and award the following relief:

a. Order Defendant, by a date certain, to conduct a search that is reasonably likely to lead to the discovery of any and all records responsive to Plaintiffs' January 26 and March 5 Requests;

b. Order Defendant, by a date certain, to demonstrate that it has conducted an adequate search;

c. Order Defendant, by a date certain, to produce to Plaintiffs any and all nonexempt records or portions of records responsive to Plaintiffs' March 6, April 29 and May 17 requests, as well as a Vaughn index of any records or portions of records withheld due to a claim of exemption;

d. Enjoin Defendant from withholding the requested records;

e. Enjoin Defendants from charging Plaintiff fees for the processing of their request;

f. Award Plaintiff its costs and attorney's fees reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and

g. Grant Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted this 6th day of June 2019.

6/9/19

OLIVER B. MITCHELL III (Pro Se)
PO BOX 1705
LONG BEACH, CALIFORNIA
90801
PH: (562) 719-3872
FAX: (888) 829-7124
REDPATCHMARINE@HOTMAIL.COM

EXHIBITS

1 – 3

OLIVER B. MITCHELL III,

Plaintiff,

vs.

SECRETARY, UNITED STATES DEPARTMENT OF VETERANS AFFAIRS; and ANN BROWN, DIRECTOR, GREATER LOS ANGELES VA MEDICAL CENTER,

Defendant.

Transmission Report

Date/Time 03-06-2019 12:21:07
Local ID 1 213 253 5076
Transmit Header Text
Local Name 1 Patient Business Office

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x11"

Department of Veterans Affairs

INDIVIDUALS' REQUEST FOR A COPY OF THEIR OWN HEALTH INFORMATION

PRIVACY ACT INFORMATION

The purpose of this form is to provide an individual the means to make a written request for a copy of their information maintained by the Department of Veteran Affairs (VA) in accordance with 38 CFR 1.577. The information on this form is requested under Title 38 U.S.C. Your disclosure of the information requested on this form is voluntary. However, if the information including the last four of your Social Security Number (SSN) and Date of Birth (used to locate records for release) is not furnished completely and accurately, VA will be unable to comply with the request. Failure to furnish the information will not have any effect on any other benefits to which you may be entitled.

TO: DEPARTMENT OF VETERANS AFFAIRS *(Name and Address of VA Health Care Facility)*
VA WEST LOS ANGELES
11301 WILSHIRE BLVD, LA, CA 90073

LAST NAME- FIRST NAME- MIDDLE INITIAL	LAST 4 SSN	DATE OF BIRTH
MITCHELL, OLIVIA B.	3512	10/24/71

DESCRIPTION OF INFORMATION REQUESTED

Check applicable box(es) and state the extent or nature of information to be provided:

- ☐ HEALTH SUMMARY *(Prior 2 Years)*
- ☐ INPATIENT DISCHARGE SUMMARY *(Dates)*:
- ☐ PROGRESS NOTES:
  - ☐ SPECIFIC CLINICS *(Name & Date Range)*:
  - ☐ SPECIFIC PROVIDERS *(Name & Date Range)*:
  - ☐ DATE RANGE:
- ☐ OPERATIVE/CLINICAL PROCEDURES *(Name & Date)*:
- ☐ LAB RESULTS:
  - ☐ SPECIFIC TESTS *(Name & Date)*:
  - ☐ DATE RANGE:
- ☐ RADIOLOGY REPORTS *(Name & Date)*:
- ☐ LIST OF ACTIVE MEDICATIONS
- ☑ OTHER *(Describe)*: DENTAL RECORDS TO INCLUDE DENTAL X-RAYS

COPY OF HEALTH INFORMATION IS TO BE DELIVERED TO THE INDIVIDUAL

- ☐ PAPER ☐ CD-ROM ☐ OTHER:
- ☐ IN-PERSON PICK-UP, PROVIDE CONTACT PHONE NUMBER:
- ☑ MAIL TO ADDRESS:
  P.O. Box 1705 LONG BEACH, CA 90801

PATIENT SIGNATURE *(Sign in ink)*	DATE *(mm/dd/yyyy)*
[signature]	3/6/19

NOTE: If signed by someone other than the individual, indicate the authority (e.g. guardianship or power of attorney) under which request is made.

VA FORM JUN 2017 **10-5345a**

Page 1 of 1

Total Pages Scanned : 1 Total Pages Confirmed : 1

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	393	3102684710	12:19:47 03-06-2019	00:00:40	1/1	1	G3	HS	CP14400

Abbreviations:
HS: Host send
HR: Host receive
WS: Waiting send
PL: Polled local
PR: Polled remote
MS: Mailbox save
MP: Mailbox print
RP: Report
FF: Fax Forward
CP: Completed
FA: Fail
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TO: DEPARTMENT OF VETERANS AFFAIRS *(Name and Address of VA Health Care Facility)*

VA WEST LOS ANGELES
11301 WILSHIRE BLVD, LA, CA 90073

LAST NAME- FIRST NAME- MIDDLE INITIAL	LAST 4 SSN	DATE OF BIRTH
MITCHELL, OLIVER B	3512	10/24/71

DESCRIPTION OF INFORMATION REQUESTED

Check applicable box(es) and state the extent or nature of information to be provided:

- ☐ HEALTH SUMMARY *(Prior 2 Years)*
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- ☐ PROGRESS NOTES:
  - ☐ SPECIFIC CLINICS *(Name & Date Range)*: _____
  - ☐ SPECIFIC PROVIDERS *(Name & Date Range)*: _____
  - ☐ DATE RANGE: _____
- ☐ OPERATIVE/CLINICAL PROCEDURES *(Name & Date)*: _____
- ☐ LAB RESULTS:
  - ☐ SPECIFIC TESTS *(Name & Date)*: _____
  - ☐ DATE RANGE: _____
- ☐ RADIOLOGY REPORTS *(Name & Date)*: _____
- ☐ LIST OF ACTIVE MEDICATIONS _____
- ☑ OTHER *(Describe)*: DENTAL RECORDS TO INCLUDE DENTAL X-RAYS

COPY OF HEALTH INFORMATION IS TO BE DELIVERED TO THE INDIVIDUAL

- ☐ PAPER ☐ CD-ROM ☐ OTHER: _____
- ☐ IN-PERSON PICK-UP, PROVIDE CONTACT PHONE NUMBER: _____
- ☑ MAIL TO ADDRESS:

P.O. BOX 1705 LONG BEACH, CA 90801

PATIENT SIGNATURE *(Sign in ink)*	DATE *(mm/dd/yyyy)*
OBM	3/6/19

NOTE: If signed by someone other than the individual, indicate the authority (e.g. guardianship or power of attorney) under which request is made.

Oliver Bruce Mitchell III
PO Box 1705
Long Beach, California
90801
(562) 719-3872

April 29, 2019

SENT VIA FAX AND USPS MAIL

Department of Veterans Affairs
Release of Information
West Los Angeles VA Medical Center
11301 Wilshire Blvd.,
Los Angeles, California
90073
Ph (310) 478-3711
Fax (310) 268-4710

Subj: INDIVIDUALS REQUEST FOR A COPY OF THEIR OWN HEALTH INFORMATION

Dear Release of Information,

My name is Oliver B. Mitchell III, and on March 6, 2019 a release for information was submitted to your office. As of todays date I have yet to receive the requested information.

Please advise me as to when I may receive the information as requested.

For your reference I have attached the original request as submitted.

Thank you for considering my request.

Sincerely,

☐

X OBM

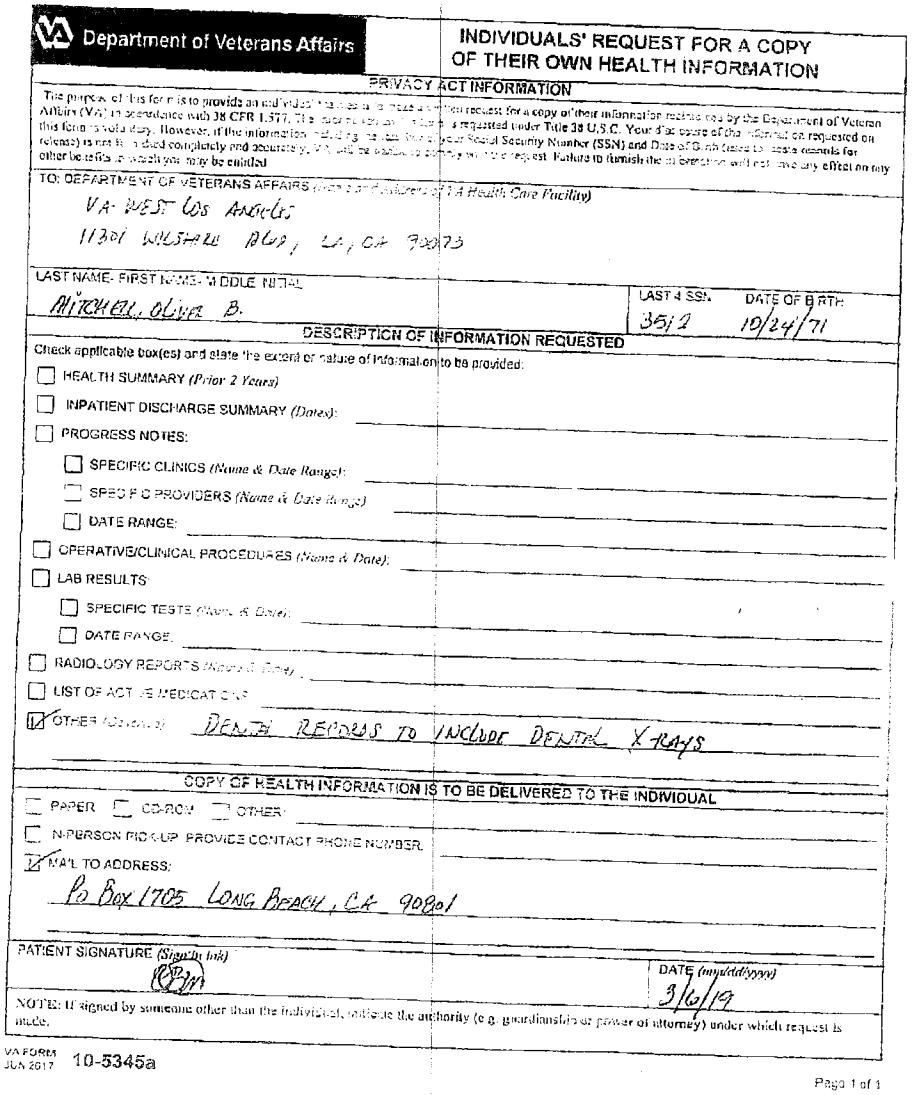
Oliver B. Mitchell III

Signed by: Oliver B. Mitchell III

Transmission Report

Date/Time	03-06-2019	12:21:07	Transmit Header Text	
Local ID 1	213 253 5076		Local Name 1	Patient Business Office

This document : Confirmed
(reduced sample and details below)
Document size : 8.5"x11"



Department of Veterans Affairs

INDIVIDUALS' REQUEST FOR A COPY OF THEIR OWN HEALTH INFORMATION

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TO: DEPARTMENT OF VETERANS AFFAIRS (Name and Address of VA Health Care Facility)
VA WEST LOS ANGELES
11301 WILSHIRE BLVD, LA, CA 90073

LAST NAME- FIRST NAME- MIDDLE INITIAL: MITCHELL, OLIVER B.
LAST 4 SSN: 3512
DATE OF BIRTH: 10/24/71

DESCRIPTION OF INFORMATION REQUESTED

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- ☐ LAB RESULTS:
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  - ☐ DATE RANGE:
- ☐ RADIOLOGY REPORTS (Name & Date)
- ☐ LIST OF ACTIVE MEDICATIONS
- ☑ OTHER (Specify): DENTAL RECORDS TO INCLUDE DENTAL X-RAYS

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- ☐ PAPER ☐ CD-ROM ☐ OTHER:
- ☐ IN-PERSON PICK-UP PROVIDE CONTACT PHONE NUMBER:
- ☑ MAIL TO ADDRESS:
  PO BOX 1705 LONG BEACH, CA 90801

PATIENT SIGNATURE (Sign in ink): [signature]
DATE (mm/dd/yyyy): 3/6/19

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VA FORM JUN 2017 10-5345a

Page 1 of 1

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EC: Error Correct

Transmission Report

Date/Time	05-17-2019	13:45:58	Transmit Header Text	
Local ID 1	213 253 5076		Local Name 1	Patient Business Office

This document : Confirmed
(reduced sample and details below)
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TO: DEPARTMENT OF VETERANS AFFAIRS *(Name and Address of VA Health Care Facility)*

WLA VA MEDICAL CENTER AND SEPULVEDA VA NC

LAST NAME- FIRST NAME- MIDDLE INITIAL	LAST 4 SSN	DATE OF BIRTH
MITCHEL, OLIVER B.	3512	10-24-71

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- ☑ OTHER *(Describe)*: DENTAL RECORDS TO INCLUDE X-RAYS.

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- ☑ MAIL TO ADDRESS:

PO Box 1705 LONG BEACH, CA 90801

PATIENT SIGNATURE *(Sign in ink)*	DATE *(mm/dd/yyyy)*
OBM	5/17/19

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VA FORM JUN 2017 **10-5345a**

Page 1 of 1

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WLA VA MEDICAL CENTER AND SEPULVEDA VA MC

LAST NAME- FIRST NAME- MIDDLE INITIAL	LAST 4 SSN	DATE OF BIRTH
MITCHELL, OLIVER B.	3512	10-24-71

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- ☑ MAIL TO ADDRESS:

PO Box 1705 Long Beach, CA 90801

PATIENT SIGNATURE *(Sign in ink)*	DATE *(mm/dd/yyyy)*
OBM	5/17/19

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VA FORM JUN 2017 **10-5345a**

562 719-3872